IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.1063 OF 1998.

Ramdas Pandurang Kawankar
and anr. : Appellants.

versus

Pandurang Mahadev Kawankar : Respondent.

Mr.S.A.Sawant for the appellants.
Mr.R.S.Yadav for the respondent.

CORAM : D.G.DESHPANDE,J.

DATED : 21st APRIL 2005.

ORAL ORDER

1. Heard Mr.Sawant for the appellants and Mr.Yadav for the respondent. Appellant is the son and, respondent is the father. The father had filed a suit against the son for evicting him from the premises on the ground that the son has no right to stay in the premises. Today the father is 95 years of age and the son is 65 years of age . Their relations are extremely stained.

The father has alleged that the son was beating him and ill-treating him. The property admittedly is owned by the father and when he found that living with the son was beyond his tolerance, he filed the suit, which came to be decreed in favour of the father. Hence this appeal.

2. Mr.Sawant contended that firstly the appellant was staying in a room exclusively with separate and independent access. The property was being developed by another brother through his father, therefore, some share to the developed property, at least to the extent of the area occupied by the appellant, be given. That proposal was about the settlement and, the counsel for the respondent contended that looking to the relations between the parties the settlement was not possible.

3. So far as the merit of the matter is concerned, Mr.Sawant contended that the appellant has produced before the Court certain documents. A compilation was handed over by him to me and the documents which were pointed out were the electricity bill in the name of the appellants

and the proof of his residence. There is no dispute that the appellant was occupying the portion of the property as alleged by the respondent. Therefore, evidence of occupation or possession is of no consequence. The question is of right of the appellant to occupy the premises and, there is absolutely no right to the appellant to stay in the premises.

4. Mr.Sawant contended from the cross examination of the father, in particularly in para 7 that the father takes away the suit from the jurisdiction of the City Civil Court. My attention was invited to the following admissions:-

> "It is not true that then I fixed Rs.100/- as rent fro that room. It is not true that accordingly Ramdas gave me Rs.100/- per month every month including water charges. I never received the money so I never gave the receipt."

In between these three admissions, there is a statement of the father which was relied upon by Mr.Sawant and this statement is,

"Till 1989 or that thereafter he paid Rs.150/- p.m. till July-97."

According to Mr.Sawant this is an admission by the father accepting rent and, therefore, the suit before the City Civil Court was not maintainable.

5. I do not find any substance in this submission. Firstly, it appears to a typographical mistake. Because two earlier suggestions have been specifically denied by the father before this particular sentence or statement. The third suggestion is also denied and, in between three denials this particular sentence has cropped up. Therefore, on the face of it, it has to be treated as a denial by the father. Because no where in his other part of the evidence, he has admitted any kind of relationship of landlord and tenant or has accepted any right of the appellant in the suit property. Neither in the plaint there is any admission.

6. At any rate and alternatively even if it

is accepted, for the sake of arguments that the father had stated that till 1989 or that thereafter he paid Rs.150/- p.m. till July-97, as an admission of receiving the amount, it cannot give any support to the case of the appellant nor does it destroy the case of the father. The father has already stated that neither before the marriage nor after the marriage the appellant was paying anything to him and, therefore, if for some time the appellant has paid him Rs.150/- p.m., then it cannot be treated as a payment towards rent. Tenancy is a creation of agreement. There has to be an agreement between the parties followed by payment of rent. Mere payment of some money cannot be treated as payment of rent. There is, therefore, no merit in this appeal. The claim and contentions of the appellant was rightly rejected by the Court. Hence, the appeal is dismissed with costs through out.

[D.G.DESHPANDE]

21/04/2005 JUDGE.